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J. Peter Bragg*

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In re Applications of:)	MM Docket No. 98-66
)	
HICKS BROADCASTING OF INDIANA, LLC)	
)	
Order to Show Cause Why the)	
License for FM Radio Station)	
WRBR (FM), South Bend, Indiana,)	
Should Not Be Revoked;)	
)	
AND)	
)	
PATHFINDER COMMUNICATIONS CORP.)	
)	
Order to Show Cause Why the)	
License for FM Radio Station)	
WBYT (FM), Elkhart, Indiana,)	
Should Not Be Revoked.)	

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Place: Washington, D.C.

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HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
October 20, 1998

The parties met, pursuant to the notice of the
Judge, at 10:05 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

APPEARANCES:

On behalf of Hicks Broadcasting of Indiana:

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ERIC T. WERNER, ESQ.
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On Behalf of the FCC:

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ROY W. BOYCE, ESQ.
KATHRYN S. BERTHOT, ESQ.
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On Behalf of the Witness:

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Also Present:

JOHN DILLE

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Edward J. Sackley, III	79	--	--	--	--
by Atty. Johnson	--	152	--	--	--
by Atty. Hall	--	162	--	--	--
by Atty. Crispin	--	231	--	--	--

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Mass Media Bureau:</u>			
23, pp. 1-9	Prev.	--	146
23, pp. 10-15, 17-19, 20-23 and 33-57	Prev.	151	--

Hearing Began: 10:05 a.m.	Hearing Ended: 3:50 p.m.
Recess Began: 12:30 p.m.	Recess Ended: 1:30 p.m.

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1 P R O C E E D I N G S

2 JUDGE CHACHKIN: Can we have appearances on behalf
3 of the parties? On behalf of Hicks Broadcasting of Indiana,
4 L.L.C.?

5 MR. KRASNOW: On behalf of Hicks Broadcasting of
6 Indiana, Erwin Krasnow, Eric Werner and Douglas Hall.

7 JUDGE CHACHKIN: On behalf of Pathfinder
8 Communications Corp.?

9 MR. BERNTHAL: Eric Bernthal, Everett Johnson,
10 Michael Guzman and Allen Gardner from the firm of Latham &
11 Watkins, Your Honor.

12 JUDGE CHACHKIN: On behalf of Niles Broadcasting,
13 Inc.?

14 MR. CRISPIN: William Crispin, Your Honor.

15 JUDGE CHACHKIN: And on behalf of the Chief, Mass
16 Media Bureau?

17 MR. SHOOK: James Shook, Roy Boyce and Kathryn
18 Berthot.

19 JUDGE CHACHKIN: Are there any preliminary matters
20 to take up before the Bureau begins its direct case?

21 MR. WERNER: We have one preliminary matter, Your
22 Honor.

23 First of all, Your Honor, our client, Mr. Hicks,
24 has asked us to convey his thanks to the Court and counsel
25 for all the other parties for agreeing to postpone this

1 hearing to accommodate his health concerns and enabling him
2 to participate with us today.

3 At this time, we would also like to advise you
4 that the further treatment of Mr. Hicks' condition requires
5 that he be in Michigan next Tuesday and Wednesday, which
6 would be the 27th and the 28th. Therefore, he will be
7 unavailable to participate in the hearing those days.

8 Assuming that the Bureau completes its case by
9 that time and with the cooperation of the other parties, we
10 would expect to put Mr. Hicks on the stand to complete his
11 testimony before he has to leave to return to Michigan.

12 JUDGE CHACHKIN: All right. Anything else?

13 MR. SHOOK: No, Your Honor.

14 JUDGE CHACHKIN: Mr. Shook, let's begin.

15 MR. SHOOK: Your Honor, the Bureau calls Edward
16 Sackley to the stand. I will go get him.

17 JUDGE CHACHKIN: Okay.

18 MR. BERNTHAL: Mr. Shook, before you do; Your
19 Honor, I understood that we were going to have brief opening
20 statements in the case. Was it your intention that they be
21 presented at the time of each party's case?

22 JUDGE CHACHKIN: It might be a good idea if you
23 would at that time.

24 MR. BERNTHAL: That is fine.

25 JUDGE CHACHKIN: I assume the Bureau does not have

1 an opening statement?

2 MR. SHOOK: No, Your Honor, we do not.

3 MR. BERNTHAL: Thank you, Your Honor.

4 JUDGE CHACHKIN: Please proceed.

5 (Whereupon, a short recess was taken.)

6 JUDGE CHACHKIN: Back on the record.

7 Would you raise your right hand, please?

8 Whereupon,

9 EDWARD J. SACKLEY, III

10 having been first duly sworn, was called as a witness herein

11 and was examined and testified as follows:

12 JUDGE CHACHKIN: Please be seated.

13 Do you want to note an appearance?

14 MS. SCHMELTZER: Yes, Your Honor. Kathy

15 Schmeltzer, Fisher, Wayland, Cooper, Leader & Zaragoza, on

16 behalf of Edward Sackley.

17 JUDGE CHACHKIN: All right. Go ahead, Mr. Shook.

18 DIRECT EXAMINATION

19 BY MR. SHOOK:

20 Q Could you state your full name, please?

21 A It's Edward, middle initial J., Sackley,

22 S-A-C-K-L-E-Y, III.

23 Q What is your current address?

24 A 10314 Archwood Drive, Portage, Michigan.

25 Q What is your current employment?

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1 A I'm employed by Cumulus Broadcasting, Inc., as
2 market manager in Kalamazoo, Michigan.

3 Q How long have you been in that position?

4 A Since August 1, 1998.

5 Q Could you briefly describe your educational
6 background post high school?

7 A I attended the University of Illinois, Oakland
8 Community College, National College of Education and
9 Parkland Community College and took classes; did not receive
10 degrees.

11 Q Did there come a time when you became involved as
12 an applicant for a broadcast license before the Federal
13 Communications Commission?

14 A Yes.

15 Q Could you tell us what that was about?

16 A In 1975, myself, along with a group of friends
17 that were working at a student radio station at the
18 University of Illinois, WPGU, decided to investigate
19 applying for and building our own FM radio station
20 somewhere.

21 This began in earnest in September of 1995 --
22 excuse me, 1975 -- with the allocation of a Class B
23 frequency to Kalamazoo, Michigan, and we filed an
24 application for that frequency on July 14, 1976.

25 Q Who is the we involved in this?

1 A There were six individuals. We formed a
2 corporation, which was called the Airborne Group, Ltd., and
3 the principals that founded the corporation were myself,
4 John Strandin, Richard Doering, Richard Fruin, Robert
5 Trobaugh -- is that six -- and Mark Rubin.

6 Q What happened to your application?

7 A There were four applications that were tendered,
8 and so it was designated for comparative hearing. We began
9 our comparative hearing process in August of 1978. There
10 was a further hearing in January of 1981, and an initial
11 decision was rendered in that case I believe in the spring
12 or summer of 1981 favorable to our application.

13 Q Did you ultimately acquire a construction permit?

14 A We did ultimately acquire the construction permit
15 after proceeding through Review Board, Commission and U.S.
16 Court of Appeals levels.

17 Q So approximately when did your applicant acquire
18 the construction permit?

19 A I believe the construction permit was issued in
20 June of 1988. We put the station on the air October 13,
21 1988.

22 Q You then acquired the license?

23 A Correct.

24 Q How long did you hold that license?

25 A We sold that license and two others that we

1 subsequently acquired to Cumulus Broadcasting, actually
2 Cumulus Media, on July 31 of this year.

3 Q Did there come a time when you came into contact
4 from a business standpoint with Mr. David Hicks?

5 A Yes.

6 Q What happened there?

7 A Well, Dave is the operator of two radio stations
8 in the market that we were in, so from that standpoint we
9 had contact with his businesses. In late 1992, I believe in
10 December, I initiated a call to Mr. Hicks. The duopoly
11 rules had come into effect I believe in August of that year.

12 Q What year was that?

13 A 1992, and in considering the potential effect of
14 the duopoly rules on our single FM station, given the
15 prospect of consolidation, I called Mr. Hicks to see if
16 there was any willingness on his part to sit down and talk
17 about consolidation in our market between our station and
18 his two.

19 Q What happened as a result of those conversations?

20 A There was initial interest on both sides, and we
21 had subsequent meetings. I believe one more private meeting
22 that was just -- we met face to face once, and then I
23 believe one more time.

24 Following that, we got together with our local
25 corporate counsel to firm up arrangements because we were at

1 that point seriously considering going ahead with that.

2 Q Who was your local counsel or corporate counsel,
3 whatever it was that you said there?

4 A The local corporate counsel, as distinguished from
5 FCC counsel. The name of the firm is Miller, Canfield,
6 Paddock & Stone, and that was also the same corporate
7 counsel that Mr. Hicks' company had retained.

8 Q Was there a particular individual at that firm who
9 represented you?

10 A In general, our primary representation was handled
11 by an attorney by the name of John Cook, although we did
12 work with other attorneys in the firm in various areas of
13 specialization.

14 Q Was there a primarily responsible attorney, if you
15 will, who worked on behalf of Mr. Hicks?

16 A Yes. His name is Eric V. Brown, Jr.

17 Q What happened as a result of your conversations,
18 negotiations, whatever it was that you had?

19 A Things moved along relatively quickly. The
20 discussions during January and February, 1993, centered
21 around what structure the transaction would take.

22 We had two Subchapter S corporations. Under IRS
23 rules, only one could survive, so there was discussion about
24 which would be the surviving corporation, whether it would
25 be an asset purchase, whether it would be a pooling of

1 interest merger, those types of things, and we entered into
2 an agreement and then subsequently filed an application with
3 the FCC. Actually, we filed an application. Actually, it
4 was three applications for the transfers back and forth.

5 We filed the applications initially listing the
6 Airborne Group as the surviving entity. Because of tax
7 considerations, we withdrew those applications and refiled
8 with Mr. Hicks' corporation, Hicks Broadcasting Corporation,
9 as the surviving entity. That was all done in I think
10 February/March of 1993 all that was out.

11 Q Then at some point were applications filed?

12 A Yes. The applications were filed I think
13 initially in February and then withdrawn and later refiled I
14 believe in March of 1993 for the transfers.

15 Q You made reference to an agreement. What
16 agreement are you referring to?

17 A There was a merger agreement between the two
18 companies, Hicks Broadcasting Corporation and the Airborne
19 Group, Ltd., that was fashioned with the help of counsel
20 that structured the business relationship, I guess, with
21 indemnifications that would be in place once the merger was
22 consummated.

23 Q If I make reference to a call provision, do you
24 have an understanding of what I am talking about?

25 A Yes, I do.

1 Q Was there a call provision in your shareholders
2 agreement?

3 A Well, the shareholder agreement was a separate
4 document from the merger agreement, but it was one of the
5 documents that was part of the merger process.

6 Yes, we did. We did draft and execute a
7 shareholder agreement that had a provision which was called
8 a for sale provision that provided that either David Hicks
9 or I could exercise this for sale provision. If Mr. Hicks
10 exercised it, he would be offering to purchase the shares of
11 all the other shareholders other than himself, and if I were
12 to exercise it I would be doing the same thing. That could
13 be exercised.

14 It didn't really have any mechanics or specifics
15 about what the reasons would be for it to be exercised, but
16 it was originally drafted as being available immediately
17 upon consummation of the merger. Before we did close on the
18 deal and consummate the merger, however, we amended that so
19 that that provision would not be available until after I
20 think the first like 16 months of operation to give us some
21 time to get used to one another.

22 Q What was the basic idea behind this for sale
23 provision?

24 A The for sale provision, as I understand it, was
25 designed to be a mechanism to be utilized by either Dave or

1 myself should there be some intractable difference,
2 basically calling it a no-fault divorce.

3 Dave's corporation, Hicks Broadcasting
4 Corporation, had no shareholders other than himself, so he
5 had no shareholder agreement coming in. We did as the
6 Airborne Group, Ltd., with multiple shareholders. We did
7 have a shareholder agreement, and this was -- the
8 shareholder agreement was necessary.

9 The for sale provision was offered by Mr. Brown as
10 a mechanism to be used if something terrible should happen
11 that forced one of us to want to get out.

12 Q Was there any mechanism for determining what the
13 price of a share should be in the event that one side or the
14 other wanted to buy the other one out?

15 A No, there was not.

16 Q Was there any particular reason why that was the
17 case?

18 A Speaking for the Airborne shareholders, we had a
19 shareholder agreement that did provide for a way of
20 determining a price that was in our agreement. It was based
21 on a formula using multiples of cash flow and a discount
22 because any shares that were offered would be a minority
23 interest, and you take a discount for minority shares.

24 When that was offered, while we were putting
25 together the shareholder agreement for what would ultimately

1 be Crystal Radio Group, the merged entity, placing a
2 valuation mechanism in that shareholder agreement was
3 rejected by Mr. Hicks and Mr. Brown.

4 Q Was any reason given to you?

5 A All I recall is that there wouldn't be a way to
6 accurately -- in the Airborne agreement it had something
7 like a five times multiple. At that point, we all agreed
8 that that was too low.

9 I think there was some concern that trying to put
10 any formula in there would bind something going ahead and
11 that the for sale provision would allow the market to set
12 the price. The offeror would have to come up with a price
13 that he would also accept.

14 Under the for sale provision you can offer to buy,
15 and if you say no, I'm not going to sell, then you then have
16 to buy from the offeror at the same price. A valuation
17 mechanism was rejected, and that was pretty much it.

18 Q Now, you have a binder in front of you. If you
19 could turn, please, to what is marked as Mass Media Exhibit
20 No. 23? In particular the pages that I want you to just
21 glance through begin at page 33 and go to page 57.

22 A I have that page 33 in front of me.

23 Q All right. Now, if you could just glance through
24 33 through 57?

25 JUDGE CHACHKIN: What volume is this, Mr. Shook?

1 MR. SHOOK: Volume II, Your Honor.

2 JUDGE CHACHKIN: All right.

3 BY MR. SHOOK:

4 Q Is the document that I have asked you to look at a
5 copy of the shareholders agreement that you have been
6 testifying about?

7 A Yes, it is.

8 Q Now, if I use the term due diligence, do you have
9 an understanding of what that means?

10 A Yes, I do.

11 Q What, if any, due diligence did the Airborne Group
12 do prior to it deciding to join forces, if you will, with
13 Mr. Hicks' company?

14 A Some due diligence --

15 MR. HALL: Your Honor, if I may, I might lodge an
16 objection as to relevance here. We have been going quite in
17 depth about this previous transaction. I am not really sure
18 what relevance it bears to the matters before us today.

19 JUDGE CHACHKIN: Mr. Shook?

20 MR. SHOOK: Your Honor, what we are doing is we
21 are eliciting background information to provide a fuller
22 picture of how things ultimately developed between Mr. Hicks
23 and first the entity that he joined with with Mr. Sackley
24 and then ultimately Mr. Hicks' involvement with the children
25 of Mr. Dille.

1 JUDGE CHACHKIN: I will permit some background,
2 but I do agree with counsel. There is no need for minute
3 details, particularly since it is not contested. None of
4 this information is contested.

5 Some background will be allowed, but we have to
6 get to the meat of the subject at some point. Overruled.

7 BY MR. SHOOK:

8 Q Do you remember the question that I asked you?

9 A Yes. Yes, I do. In general terms, some due
10 diligence gets handled by counsel in terms of ability for
11 the corporation to operate and being in good standing.

12 On site due diligence, which is the primary focus
13 that we had, my wife and I in particular spent several days
14 going through paper records at Mr. Hicks' location, you
15 know, going through technical facilities, transmitter sites,
16 asking questions about the building structure, mechanical
17 equipment, going through accounts payable, accounts
18 receivable records, billing records, FCC filings, the public
19 file, letters that had been received from accountants, audit
20 reports, payroll records, employee benefits records, but a
21 pretty comprehensive review of all the business records and
22 physical assets for Hicks Broadcasting Corporation.

23 Q Are you aware of whether or not Mr. Hicks or
24 someone on his behalf conducted a due diligence of your
25 company?

1 A To the best of my knowledge, there was no
2 examination of records for the for the Airborne Group, Ltd.,
3 or physical facilities by Mr. Hicks or any representative.

4 Q Did there come a time once you became involved
5 with Mr. Hicks from a business standpoint that the station
6 WRBR, South Bend, Indiana, came to your attention?

7 A Yes.

8 Q How did that come about?

9 A It initially was brought to my attention by Mr.
10 Hicks, who handed me, along with other papers, several pages
11 of financial information on WRBR and said that the station
12 was for sale.

13 Q What, if any, conversation did you have with him
14 about that?

15 A As I mentioned, there were other papers on other
16 stations at the time. The only one I specifically recall, I
17 believe, was another station in Lafayette, Indiana, that was
18 in these papers.

19 I don't know that we spent any -- if there was
20 specific attention paid to any one in particular, but the
21 comment that I remember, which runs rampant throughout the
22 record in our civil case, is that when I got to the WRBR
23 financial statements and scanned them, looking at the
24 expenses and cash flow, I said this one looks like a dog.

25 Q I want to direct your attention to what has been

1 marked as Mass Media Exhibit No. 5. Again, it is in the
2 second volume, which is the volume you have in front of you,
3 Mr. Sackley.

4 A Okay. I have that.

5 Q Do you recognize this document as being either the
6 same or similar to what you and Mr. Hicks looked at?

7 A My recollection of the document that he showed me
8 was that it was a typewritten document. It was not a
9 computer printout, but more I recall it being a portrait
10 orientation, as opposed to a landscape, which this is, and
11 that it appeared to be more typed by a typewriter, as
12 opposed to a computer printout.

13 Q Very good. When the merger with Mr. Hicks'
14 company took place, am I remembering correctly that you had
15 brought two stations into the merger, and he had brought
16 one, or was it the other way around?

17 A It was the other way around.

18 Q So Mr. Hicks brought two stations in. You brought
19 one. What was the distribution of shares following this
20 merger in terms of who held what interest?

21 A At the time of the merger, it was 70 percent
22 allocated to the Airborne, the initial Airborne
23 shareholders, and 30 percent allocated to Mr. Hicks.

24 That was modified just a little bit because a
25 couple of Airborne shareholders dissented from the merger,

1 and when they dissented their stock then, by virtue of our
2 agreement with Mr. Hicks, then was allocated to both sides,
3 so Mr. Hicks actually ended up I believe with 32 -- a little
4 over 32 -- percent, and the shareholders who had been
5 Airborne shareholders had the 68 or a little less than 68.

6 Q Now, how did it come about if your group is
7 bringing in one station and Mr. Hicks is bringing in two
8 that the distribution of shares worked out as it did?

9 A Well, it really had less to do with the number of
10 stations and more to do with the financial situation that
11 existed at the time.

12 Mr. Hicks had a substantial amount of outstanding
13 debt compared to Airborne, and the merged entity was going
14 to be assuming all of Mr. Hicks' company's debt. That in
15 effect bought down his level of equity because of the debt
16 assumption.

17 Q In addition to the company assuming the debt, were
18 there any personal guarantees given as a consequence?

19 A In connection with the refinancing, personal
20 guarantees were provided by Dave and myself to Michigan
21 National Bank, yes.

22 Q Now, are each of you responsible for the entire
23 amount?

24 A I do believe that that's the way it was
25 structured, yes.

1 Q Following the merger, where were your offices
2 physically located. Yours meaning the company's, the new
3 company's offices?

4 A It took about three months to integrate. The WRKR
5 facility was to be shut down and vacated. It took about
6 three months to move all the people and equipment into the
7 Hicks Broadcasting Corporation location, and that became the
8 main office.

9 Q Approximately when did this move take place?

10 A The programming staff moved I believe about the
11 third week of September, and the sales staff and
12 administrative staff moved middle to late November of 1993.

13 Q What about yourself?

14 A I had set up temporary quarters at Hicks
15 Broadcasting I believe maybe a week to ten days before the
16 merger was consummated, but I do recall -- I can check my
17 calendar. I think we closed on a Friday. I remember
18 hauling everything in and setting up that weekend from a
19 permanent standpoint.

20 Q The merger took place when?

21 A The merger took place on August 31, 1993.

22 Q As a consequence of the merger, what positions did
23 you and Mr. Hicks hold?

24 A From a corporate standpoint, I was president of
25 the corporation. Dave was chairman and treasurer of the

1 corporation. From an operational standpoint, my title was
2 general manager, and Dave's was director of sales.

3 Q Who was on the new board --

4 A Excuse me. I think Dave was also -- Dave I think
5 was also vice-president of the corporation.

6 Q Who was on the board of directors of the merged
7 entity?

8 A At the time of the merger, the board of directors
9 consisted of myself, my father, my wife, John Strandin, Dave
10 Hicks and Eric Brown.

11 Q So from the standpoint of where the individuals
12 had come from previously, four of the new board members had
13 come from the Airborne Group, and two had come from Hicks?

14 A Correct.

15 Q Did there come a time when you had occasion to see
16 Mr. John Dille, III, at the offices of the Crystal Radio
17 Group?

18 A Yes.

19 Q Can you tell us approximately when that took
20 place?

21 A I've had to replay this in my mind many times.
22 The slice of time was was it the week before the merger or
23 the week after the merger, but, I think as Mr. Guzman
24 flushed out during the depositions, based on the sequence of
25 events now I believe it would have been right after the

1 first of September, so probably the first week of September,
2 1993.

3 Q And what is it that transpired at that meeting?

4 A Well, I guess it was probably more an encounter
5 than a meeting. I recall that I was standing in the doorway
6 of what was then my office. It may not have been fully
7 occupied at that time. Mr. Hicks -- it is towards the front
8 of the building.

9 Mr. Hicks came around the corner with a guest. I
10 recognized him only that I'd seen him somewhere before.
11 Dave introduced him to me, and as soon as I heard the name I
12 knew who he was. I said hi, what brings you to Kalamazoo?

13 Q And he said?

14 A He said Dave is -- I'm here to meet with Dave, and
15 Dave is helping me out in South Bend.

16 Q Did you ask him at that time what he meant by
17 that?

18 A No. It was a casual comment. There were a few
19 more -- I mean, there were a few more things, you know, that
20 were said at the time. I'm helping out. It was I can't buy
21 it because of the newspaper, and he's me helping out, and
22 he's going to hold on -- this is the critical thing, I
23 guess, that he's going to hold onto it until I can own it.

24 Q Did you have any other conversation with him at
25 that time?

1 A That was what stuck in my mind. I did mention to
2 Mr. Guzman we didn't go into talking about kids or radio or
3 the weather or anything like that. It was a very short
4 duration. We were all standing up or standing in the
5 doorway. We didn't sit down. We didn't go get coffee. He
6 was just -- and then he moved on down the hallway with Mr.
7 Hicks.

8 Q What, if anything, did that remark trigger in your
9 mind in terms of whether there would be a problem with this
10 or it was okay?

11 A At that point in time it didn't -- no alarm bells
12 went off particularly. It was a casual comment, and I won't
13 say at that point I drew anything out of the comment right
14 then and there.

15 It, however, became a point of discussion because
16 we had just spent eight months going through merger
17 discussions, consummating a merger. We had people move in,
18 equipment to do, building modifications to take place, and I
19 was wondering at that point why is Dave getting involved
20 with another radio station when we've got so much work to do
21 here in Kalamazoo, and so the subsequent I guess brain
22 activity is what does this mean for him? Is he going to
23 have to be going to South Bend? Is he going to have to put
24 money into this thing?

25 You know, those things are going on in my mind, so

1 right at that point it raised a lot of questions, but it
2 didn't have any particular significance right then.

3 Q Now, you said a point of discussion. Did you end
4 up having discussions with anyone?

5 A We had extensive discussions at our first board
6 meeting, but prior to that I don't have specific
7 recollection of particular days or venues or encounters with
8 Dave, but in looking at the agenda for the September board
9 meeting there was no question that Dave and I had
10 conversations about what his involvement would be in the
11 acquisition of WRBR and how he would fit in and whether this
12 would take time away from him, financial demands, etc.

13 I don't have a specific recollection, but I do
14 know that I talked with him because I had to collect the
15 information before we had the board meeting.

16 Q Now, what board meeting are you talking about?

17 A The first Crystal Radio Group board meeting other
18 than the merger, I guess. There were some signed things
19 that represented a board meeting. The first face to face
20 board meeting was September 28, 1993.

21 Q You also mentioned an agenda. What was that
22 about?

23 A I prepared the agenda for the meeting. It had
24 always been my habit in putting an agenda together not just
25 to put bullet items and then have to do a full discussion

1 when we got there, but I put together a narrative style
2 agenda. That was the basis of our meeting on September 28.

3 Q I want you to go back again to Exhibit 23, and I
4 want to direct your attention to pages 10 through 13. Is
5 this the agenda that you were referring to?

6 A This is the final agenda, yes, that was
7 distributed to the directors.

8 Q When you say final, do you mean to suggest that
9 there were earlier versions?

10 A There was a draft prior to this, yes.

11 Q What happened to it?

12 A The original draft of this agenda -- realize that
13 when you do things on a word processor, you have a document
14 there. My habit is not to save multiple versions of a
15 document, but to make any changes on a draft in the document
16 itself.

17 My very clear recollection is that the agenda that
18 I had prepared prior to this meeting was in this narrative
19 style. I printed out a copy and shared it with Dave before
20 the meeting. I believe this meeting was on a Friday, so I
21 will assume it was the day before.

22 I shared it with Dave, and Dave took exception to
23 some elements that were in the draft agenda, telling me that
24 he thought they were provocative and -- I don't know if
25 those were his words, but that these were not the kinds of

1 things that we should be talking about and that these were
2 issues best resolved between us, and we didn't need to get
3 other people involved.

4 I told Dave this is a new world now. We've got a
5 bunch of other shareholders and other people. I'm used to
6 operating this way where I disclose everything to all the
7 other folks and Dave was not, so we did some negotiation
8 about the agenda.

9 I revised the agenda and made some changes that I
10 guess I felt would make it more palatable to him, again
11 understanding this situation. He's going from being the
12 sole shareholder and president of his own company to being a
13 minority shareholder with a whole bunch of new people.

14 The merger had taken place largely as a result of
15 the fact that he needed to refinance his business. He was
16 having difficulty doing so, so it was an awkward situation
17 at best. We were trying to make the best of it by trying to
18 be agreeable to making some of these changes on the agenda
19 for him.

20 Q I want you to look at what has been marked as page
21 12 of that exhibit. You can see the page numbers at the
22 very bottom there.

23 A Yes.

24 Q Now, in the middle of this page there is a heading
25 that reads Outside Ownership and/or Quasi Ownership of

1 Additional Broadcast Properties. Was that particular
2 section revised or not?

3 MR. JOHNSON: Your Honor, at the risk of being
4 premature, this document is not admitted into the record in
5 this case, and yet we have had some testimony about it. The
6 document is hearsay, and we would object to its admission if
7 it is ever offered into admission. I am not sure that
8 adducing the testimony in this way solves the problem.

9 JUDGE CHACHKIN: That is an objection that is
10 overruled. Go ahead, Mr. Shook.

11 BY MR. SHOOK:

12 Q The question was was this particular section
13 revised or not?

14 A I don't believe -- this question, believe it or
15 not, I don't think has come up in any of the depositions.

16 I don't have a specific recollection about this
17 section being revised. There were others that were, but
18 particularly this one, no.

19 Q Was this a section that you and Mr. Hicks had
20 discussed?

21 A We discussed the document in general. As you can
22 see, it runs four pages. Most of the discussion about this
23 document dealt with the paragraph directly above that, which
24 was designating me as the chief executive officer and
25 assigning operational titles. That was the thing that had

1 the biggest discussion.

2 Q Did a board meeting take place on September 28?

3 A Yes, it did.

4 Q What happened at that board meeting relative to
5 any discussion concerning WRBR?

6 A Well, with respect to this agenda item, the seed
7 had been planted with Mr. Dille's meeting that there was a
8 possibility that Dave would be entering into an ownership
9 arrangement for another broadcast station. Whether that was
10 in conjunction with Mr. Dille or anyone or just by himself
11 was of significance to our board.

12 As an FCC licensee that had just gone through a
13 merger and had passed muster, I guess, we had three licenses
14 that were very valuable to us. It was our intention that
15 nothing take place that might jeopardize the value of those
16 licenses, and we understood that any outside ownership may
17 have potential impact upon our licenses because of the
18 conduct of a licensee.

19 Because Mr. Hicks was a five percent or greater
20 shareholder of what was then Crystal Radio Group, he was
21 also an officer, a director and an employee. Under FCC
22 rules and my understanding of them, any misconduct, any
23 problems with another station that he might be involved,
24 might flow back to us and put our licenses at risk or
25 certainly cause us to spend legal fees to defend ourselves

1 if some claim should be made by a third party in a license
2 renewal or something like that.

3 At this meeting, the main purpose of the
4 discussion then was to collect information about what Mr.
5 Hicks was planning to do and to have him tell us what his
6 plans were. Regardless of what took place in the meeting
7 room, this is the agenda here. You can see that the agenda
8 was already set here. This was written by me. These are my
9 words.

10 I said that before anything would take place with
11 respect to outside ownership or ownership of another
12 property that we, the board, be provided with an opinion by
13 an FCC attorney, at no cost to our company, relative to the
14 potential impact of such a transfer or assignment on our
15 company and that should be provided no less than three
16 business days before entering into any written or oral
17 agreement.

18 This was the way we sought to protect our interest
19 by saying okay, you may be thinking about doing this or
20 wanting to do this. I knew that the way that he had
21 described how this would work to me wasn't valid from FCC's
22 standpoint. That was my personal opinion, and I expressed
23 that opinion at that September meeting.

24 Q What was it that he said to you that gave you that
25 impression?

1 A Let me finish the answer on here first. The whole
2 reason for getting the opinion was to take my personal
3 feelings out of this and put the burden on FCC counsel to
4 tell us whether or not this was right or not.

5 Q What was it that was said to you that triggered
6 that concern?

7 A At the board meeting and during the days prior to
8 the board meeting where I talked with Dave, it was very
9 clearly presented that this whole transaction, that the
10 acquisition of WRBR, was being done as an accommodation by
11 Dave for John Dille and for no other purpose.

12 Dave told us that he was not going to be -- he was
13 not going to have to spend time in South Bend overseeing
14 operations, that he wasn't going to have to put any money
15 into the deal, that he was just going to hold onto it until
16 such time as Mr. Dille -- maybe whether he said John or
17 John's kids really to me wasn't of particular significance
18 at the time, but he clearly indicated to us, to the board
19 members as an assembled group and to me privately, that this
20 was being done.

21 He was going to hold onto this -- he was a straw
22 man -- until it could be transferred to the entity that
23 ultimately wanted to have it.

24 Q What kind of discussion about this, if any, did
25 you have at the board meeting?

1 A Dave and, of course, Ric Brown -- Eric Brown --
2 was a member of our board, but he was also a corporate
3 attorney, and he also had been Dave's attorney for years
4 prior to the merger. Dave told us what his role would be,
5 and Ric Brown assured us that everything was fine, was on
6 the up and up, that Mr. Dille's attorneys were involved.

7 Whether he said that they have assured me that
8 everything is okay or him just saying everything is okay
9 because I feel comfortable about it, it was one that sticks
10 in my mind. This is done all the time. It was one of those
11 well, this is done all the time. What's the big deal?
12 Don't be concerned about this because Dave won't have to be
13 there. He won't have to put any money in. This is no big
14 deal. It's being done as a favor for a friend.

15 This was a recurring theme. A favor for a friend.
16 A favor for a friend. The upside potentials -- well, okay.
17 It was either at this meeting or maybe there's another
18 subsequent meeting. They're saying okay, it's great to be
19 doing a favor for a friend, but what's in it for you kind of
20 stuff. It's like no, this isn't going to be a big windfall
21 for him. It's just something where he's allowing this to
22 happen to accommodate Dille. We talked about the joint
23 sales agreement and that John wanted to preserve that that
24 was already in place.

25 This was really irrelevant to everything that we

1 were doing at Crystal Radio Group because we had only been
2 in business for four weeks. From my standpoint, I'd been
3 working very, very long days, nights, weekends to try to get
4 staff in there, to put things together, and I needed Dave's
5 full attention and full energy on our operation and was
6 concerned that he was going to allow himself to become
7 distracted, even if it be on a very casual basis, with this
8 other property.

9 Of course, I also knew that if this was really the
10 way that the ownership was going to be structured that it
11 was a sham.

12 Q Now directing your attention to pages 14 and 15 of
13 Exhibit 23. Do those pages represent a true copy of the
14 minutes of the board meeting?

15 A Yes, they do.

16 Q Following the September 28 board meeting,
17 approximately when did WRBR next come to your attention?

18 A Following the September meeting?

19 Q Yes, sir.

20 A Dave and I may or may not have had brief
21 discussions about WRBR after this meeting and prior to the
22 next event that I'll talk about. There may have been, you
23 know, how are things going and just non-committal,
24 non-descriptive comments.

25 In early January of 1994, I received a telephone

1 call from Cliff Aldrin. He was our accountant, and he
2 called to congratulate me and our company on the acquisition
3 of another radio station in South Bend.

4 At that point, this was so -- I mean, I wasn't
5 thinking. When he said that, I wasn't thinking aha, this is
6 WRBR. He's gone ahead and filed an application without
7 getting an opinion. At that point I was puzzled. I didn't
8 know what he was talking about. Another station in South
9 Bend? I'm thinking is there something that I don't know
10 about? I'm confused.

11 He said I've got Broadcasting. He starts reading
12 it in Broadcasting magazine. He starts reading a blurb. He
13 says da-da-da-da-da-da-da, Hicks Broadcasting. I'm sorry.
14 I know in transcripts you don't like da-da-da-da-da-da-da.
15 He starts reading Hicks Broadcasting of Indiana. He says
16 oh, that's not you, is it? You're Crystal now.

17 Lights go on. I said Cliff, can you fax that to
18 me, which he promptly did. I walked in. Dave was sitting
19 at his desk. I laid it down in front of him. I said what's
20 this? He says the notice of our application. I said what
21 application? When was it filed? Where's our opinion? Why
22 don't we know about this? Where's copies of it? What's
23 going on here?

24 It was just like well, it's done. No big deal.
25 Was I angry? Oh, man. You better believe I was. It just